

September 10, 2013

Joginder Dhillon, Chief Counsel
CA Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Your Request for Advice
Our File No. A-13-116

Dear Mr. Dhillon:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Would Macau Gaming Equipment Manufacturers Association’s (“MGEMA”) reimbursement of Chairman Lopes’ and Commissioner Schuetz’s travel, lodging, and subsistence costs constitute gifts under Section 82028(a)?
2. If so, may Chairman Lopes and Commissioner Schuetz accept these gifts?
3. If they cannot accept these gifts, do the travel, lodging, and subsistence costs meet the exception under Section 89506(a)(2)?

CONCLUSIONS

1. MGEMA’s reimbursement of travel, lodging, and subsistence costs would constitute reportable gifts under Section 82028(a).

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Chairman Lopes and Commisioner Schuetz cannot accept these gifts because they exceed the Act's gift limit, which is currently \$440.
3. The exception in Section 89506(a)(2) does not apply in this situation because the gifts are not provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or a person domiciled outside the United States that substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

FACTS

Chairman Lopes and Commissioner Schuetz have been invited to speak and participate in panel discussions at a conference on gaming in Macau. This is an annual event organized by MGEMA, and it features gaming equipment manufacturers as well as other gaming products and services providers. Lopes and Schuetz will share their views on legislative developments in California in the area of Internet gambling. MGEMA has offered to pay for the costs to travel to and from Macau as well as the necessary lodging and subsistence related to the conference. The value of the trip for each member is in excess of \$10,000.

ANALYSIS

The term "gift" is defined in Section 82028(a) as:

"Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status."²

In an effort to reduce improper influences on public officials,³ the Act regulates the receipt of gifts by public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency's conflict-of-interest code, as adopted pursuant to Section 87300,

² Section 82044 defines payment, in part, as any "rendering of ... services or anything else of value, whether tangible or intangible."

³ A "public official" is "every member, officer, employee, or consultant of a state or local governmental agency." (Section 82048.)

if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code as specified in the code (Section 87302(b)).

Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Gifts of Travel

Travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of transportation, lodging, and meals for the conference in Macao, would be considered reportable gifts. (Section 82028; *Gault* Advice Letter, No. A-07-158.)

Gifts of Travel – Exceptions

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's gift limit, which is currently \$440.

Section 89506(a), in relevant part, provides an exception from the gift limits for certain travel payments:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either the following apply:

“(1) The travel in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence

expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.”

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institutions, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

These exceptions to the gift limit provisions for certain travel purposes are generally construed narrowly. Payments for travel in connection with a speech provided by the official are excluded from the \$440 gift limit only if travel is within the United States. (Section 89506(a)(1). Regulation 18950.1(a).)

In addition, the travel may not be subject to limits if it is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institutions, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Based upon the facts you have provided, the travel is outside of the United States and there is no indication that the MGEMA meets the statutory definition of a “person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.” In the materials you submitted, MGEMA describes itself as an “association representing companies working on research, development and manufacturing of gaming equipment.” Accordingly, it does not appear that any exception applies to your circumstances.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

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Legal Intern, Legal Division

HGK:jgl